

United States
Circuit Court of Appeals

For the Ninth Circuit. 7

UNDA MUNOZ, by O. A. ELLIS, Her Attorney
in Fact,

Appellant,

vs.

AUBURN LUMBER COMPANY, a Corporation,
and W. N. TEN EYCK, Receiver of
CHRISTMAS HILL MINING COMPANY,
a Corporation,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Southern Division.

FILED

SEP 10 1920

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

Attorney for Appellant:

DANIEL BARTON, Esq., 704 Market St.,
San Francisco, Calif.

Attorneys for Appellees:

R. C. McKELLIPS, Esq., ORRIN J. LOW-
ELL, Esq., Auburn, Calif.

In the District Court of the United States in and
for the Northern District of California.

UNDA MUNOZ, By O. A. ELLIS, Her Attor-
ney-in-fact,

Plaintiff,

vs.

AUBURN LUMBER COMPANY (a Corpora-
tion), and W. N. TENNEYCK, Receiver of
Christman Hill Mining Company (a Corpo-
ration),

Defendants.

BILL OF COMPLAINT.

To the Honorable the Judges of the District Court
of the United States of America in and for
the Southern Division of the Northern Dis-
trict of California: .

Now comes the plaintiff, Unda Munoz, a citizen
and inhabitant of the city and State of New York,

by and through her attorney-in fact appointed to represent her interests by her instrument in writing of a power of attorney to represent plaintiff in the State of California, that said attorney-in-fact, O. A. Ellis, is a citizen of and inhabitant of California, residing in the city and county of San Francisco, State of California. That the Auburn Lumber Company, a corporation, is a citizen and inhabitant of the town of Auburn, county of Placer, State of California, that W. N. Teneyck, is a citizen and inhabitant of the town Lincoln, said county of Placer, State of California, that the Christmas Hill Mining Company a corporation, is a citizen and inhabitant of the city of Reno, State of Nevada, with its offices and place of business in the said city of Reno, State of Nevada. And therefore plaintiff complains and says for cause against said defendants as follows, to wit:

1. That the plaintiff is the owner of certain personal property, consisting of mining and milling machinery, situated at Butchers Ranch, county of Placer, State of California, that said personal property was sold, assigned, and transferred by the Ellis Mill Company a corporation, a citizen and inhabitant, of the State of California, by a Bill of Sale made by the said Ellis Mill Company, to the plaintiff, herein, [1*] dated September 19, 1928, ever since has been and now is the owner of said property, copy of said bill of sale is hereto attached made part hereof and marked Exhibit "A."

*Page-number appearing at the foot of page of original certified Transcript of Record.

2. That on or about the 17th day of March, 1928, the defendant, Auburn Lumber Company, a corporation, filed an action for debt against the Christmas Hill Mining Company, a corporation, in the Superior Court of California in and for the county of Placer, that said defendant, procured judgment, that at the time of the issuance of said action and process thereon, said defendant, then the plaintiff against the Christmas Hill Mining Company procured a writ of attachment and did attach and hold said property at said time owned by the Ellis Mill Company, a corporation, and said attachment remained in full force and effect until on or about September 1, 1928, that the Ellis Mill Company filed its claim of ownership of the said mining and milling machinery of which it was then the owner. That subsequent to the defendant procuring judgment in the Superior Court of Placer County, that the Clerk of said court issued an execution and that a levy was made by the sheriff of Placer County upon the property of plaintiff, that she filed her claim of said personal property, consisting of mining and milling machinery situated upon the property of the Christmas Hill Mining Company as herein preceedingly mentioned through her attorney-in-fact, O. A. Ellis, that the value of said property is \$12,500. That said value was specified in the affidavit of claim and delivery (replevin) of plaintiff, that defendant failed to deposit with the sheriff the required bond to sell the said personal property and the execution was returned unsatisfied.

3. That by supplementary proceedings in the Superior Court of Placer County and upon application of the defendant for the appointment of a receiver for the Christmas Hill Mining Company, a corporation, organized and existing under and by virtue of the laws of the State of Nevada, without representation in California at the time of said application. That, W. N. TenEyck, was appointed by order of Superior Court on the 10th day of April, 1929, and is now the duly appointed, qualifying [2] receiver of the Christmas Hill Milling Company, a corporation, that a motion has been made by the defendant, Auburn Lumber Company, to set aside order of appointment and re-appoint said receiver with greater powers that said motion is set for hearing to come up before the Court at Auburn on the 29th day of April.

4. That plaintiff was in no way interested in the said Christmas Hill Mining Company, nor in the actions for debt against the said corporation, that the Ellis Mill Company was the largest creditor of the Christmas Hill Mining Co., that plaintiff had made advances in money to the said Ellis Mill Company and by reason thereof the said mining and milling machinery leased by it to the Christmas Hill Company was sold and assigned to her and that the same appears upon the minutes of the Ellis Mill Company on May 19, 1927, on or about the time that the said Ellis Mill Company leased certain mining and milling machinery to the said Christmas Hill Mining Company.

5. That all of the times herein mentioned said

defendant Auburn Lumber Company, a corporation, has maliciously and fraudulently prosecuted its supplementary proceeding against the plaintiff in an effort to collect from her a debt contracted by the Christmas Hill Mining Company its agents and servants, that plaintiff and her attorney-in-fact has been harrassed and caused to expend much time and money in attending court proceedings in the county of Placer, State of California, for the protection of her rights in the said property and that said supplementary proceedings after procuring judgment have been prosecuted by the said defendant with malice to the detriment of plaintiff and that said defendant continues to harass and prosecute said supplementary proceedings against the plaintiff with malice and without any just cause legal or equitable and at all of the times herein mentioned plaintiff has been deprived of the use of her said property by the said defendant, Auburn Lumber Company, a corporation, and that its attorneys, servants, and agents [3] have made threats to continue the said prosecution against the plaintiff and her representative and are continuing by appointment of a receiver to take over the property of the Christmas Hill Mining Company upon whose premises the personal property of plaintiff is now situated and unable to remove same from the premises of the said premises of the Christmas Hill Mining Company and that said receivership is intended to take over and deprive this plaintiff of the use and benefit of her property situated on the premises of the said Christmas Hill

Mining Co., at Butchers Ranch, County of Placer, State of California.

6. That defendant W. H. TenEyck, herein, named is the duly appointed Receiver to take charge of the property of plaintiff and is only named as defendant in this bill for the purpose.

7. That by reason of the facts preceedingly stated the plaintiff is deprived of the use and benefit of her property of the value of \$12,500. That said proceedings subsequent to judgment has been prosecuted with malice and fraud to injure the plaintiff and deprive her of her property and by reason thereof she has been damaged in the sum of Fifty Thousand (\$50,000.) Dollars in addition to the value thereof.

8. That in view of the facts herein set forth the plaintiff will suffer immediate and irreparable loss will result to her unless said defendants are restrained by the interlocutory decree of this Court and that plaintiff will sustain said loss before hearing of the proceedings upon notice and plaintiff prays that the said defendant, Auburn Lumber Company, a corporation, and W. N. TenEyck, in his official capacity be enjoined from further proceeding against the property of the plaintiff or in anywise interfering with the same upon the premises of *of* the Christmas Hill Mining Company, a corporation, at Butchers Ranch, county of Placer, State of California, where the said property [4] of plaintiff is now situated.

9. May it please your Honors to grant plaintiff not only a writ of injunction conformable to the

prayer of this bill, but also a writ of subpoena of the United States of America, directed to the said Auburn Lumber Company, a corporation, and W. N. TenEyck, a receiver, commanding them to appear on a day certain to appear and answer unto this bill of complaint and to abide and perform such order and decree in the premises as to the Court *as to the Court* shall deem proper and such other relief as the Court may deem proper in accord with equity and good conscience.

DANIEL BARTON,
Attorney for Plaintiff.

United States of America,
In and for the Northern
Division of California,—ss.

Oscar A. Ellis, being first duly sworn, deposes and says: That he is the attorney-in-fact by Power of Attorney for the plaintiff, herein, Unda Munoz, that he has heard read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

UNDA MUNOZ.
By O. A. ELLIS,
Attorney-in-fact.

Subscribed and sworn to before me this 24 day of April, 1929.

[Seal] THEO. FROLICH,
Notary Public in and for the City and County of
San Francisco, State of California. [5]

EXHIBIT "A."

- 2 Gas Engines 20-20 Horse power.
- 1 Gas-oil Engine, 50 Horse power hoist attached.
- 1 Ford Truck Necessary belting.
- 1 Rock breaker 10x12 inches.
- Tools, 4x4 Ellis Electric Amalgamators.
- 1 Double drum hoist and Avery gas Engine attached.
- 2 2½ inch pipe connections.
- 2 2½ inch valves.
- 1 Chain drill, 1 ratchet drill, bits and twist drill.
- 1 Speedometer, 1 extension wood bit.
- 100 ft. 6 inch 2½ inch black pipe.
- 100 ft. 1 inch pipe dipped.
- 1500 ft. ¾ inch pipe new.
- 6 2½ inch stand Ells.
- 4 2½ inch stand teas.
- 1 3½x2½ inch bushing.
- 1 3x2½ inch reducer.
- 2 Tanks 1-285 Gal. 1 550 Gal. cap. contents attached.
- Oil drums and smaller tanks.
- 100 ft. ¾ inch Armour steel transmission cable.
- 2 Ellis Grip Automatic shives.

[Endorsed]: Filed Apr. 25, 1929. [6]

SUBPOENA AD RESPONDENDUM.

United States of America.

In the Northern Division of the United States District Court for the Northern District of California.

IN EQUITY.

The President of the United States of America,
GREETING: To Auburn Lumber Company (a Corporation), and W. N. Teneyck, Receiver of Christmas Hill Mining Company (a Corporation).

YOU ARE HEREBY COMMANDED, that you be and appear in the Northern Division of the United States District Court for the Northern District of California, aforesaid, at the courtroom in the city of Sacramento, twenty days from the date hereof, to answer a bill of complaint exhibited against you in said court by Unda Munoz, by O. A. Ellis, her attorney-in-fact who is a citizen of the city and State of New York, and to do and receive what the said court shall have considered in that behalf.

WITNESS, the Honorable HAROLD LOUDERBACK, Judge of said District Court, this 25th day of April, in the year of our Lord one thousand nine hundred and 29 and of our Independence the 153d.

[Seal]

WALTER B. MALING,

Clerk.

By F. M. Lampert,
Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12,
RULES OF PRACTICE FOR THE
COURTS OF EQUITY OF THE UNITED
STATES.

YOU ARE HEREBY REQUIRED to file your answer or other defense in the above suit, on or before the twentieth day after service, excluding the day thereof, of this subpoena, at the Clerk's office of said court, pursuant to said bill: otherwise the said bill may be taken *pro confesso*.

WALTER B. MALING,
Clerk.

By F. M. Lampert,
Deputy Clerk. [7]

State of California,
County of Placer,—ss.

Elmer H. Gum, being first duly sworn, deposes and says: That he is the sheriff of the county of Placer, State of California, that on the 29th day of Apr., 1929, he personally served copies of the within process and bill of complaint upon said defendants therein named in the county of Placer, by *deliver* to and leaving with the Auburn Lumber Company, a corporation, and Edwin T. Robie, an officer of said corporation and to W. N. TenEyck in person on the 5th day of May, by delivering to each of them a copy of said subpoena and bill of complaint in the county of Placer in the said District.

ELMER H. GUM.

Subscribed and sworn to before me this 9th day of May, 1929.

[Seal] T. L. CHAMBERLAIN,
Notary Public.

[Endorsed]: Filed May 11, 1929. [8]

[Title of Court and Cause.]

RESTRAINING ORDER.

The plaintiff in the above-entitled cause, having filed her bill of complaint in the District Court of the United States in and for the Northern District of California, against the defendants, and having prayed for an injunction against the said defendants, Auburn Lumber Company, a corporation, and W. H. TenEyck, in his official capacity as Receiver, requiring them to refrain from certain acts in said complaint and hereinafter more particularly mentioned;

Now, on reading the bill of complaint in said cause duly verified by the oath of O. A. Ellis, attorney-in-fact for said plaintiff and it satisfactorily appearing to me therefrom that there are sufficient grounds for granting an order to show cause why an injunction should not be granted;

It is therefore ORDERED, that said defendants, Auburn Lumber Company, a corporation, and W. N. TenEyck, Receiver, respectively, appear before me in the courtroom of the above-entitled court at the Post Office Building in the city of Sacramento, State of California, on Monday, May 13th, 1929,

[9] at the hour of 10 A. M. of that day, to show cause, if any they have, why they should not be perpetually enjoined and restrained from selling at public auction or private sale or in any manner disposing of or interfering with the property of the plaintiff, consisting of mining and milling machinery and more particularly described in the attached exhibit marked "B."

It is further ORDERED, that said defendant, Auburn Lumber Company a corporation, W. N. TenEyck as Receiver, respectively, their servants, agents, solicitors, attorneys, and all others acting in aid or assistance of the defendants, do absolutely desist from selling the said personal property, consisting of mining and milling machinery, situated at Butchers Ranch, county of Placer, State of California.

San Francisco, California, April 27, 1929.

HAROLD LOUDERBACK,

Judge of the District Court of the United States.

[10]

EXHIBIT "B."

- 2 Gas engines, 20-20 horse power.
- 1 gas-oil engine, 50 horse power hoist. attached.
- 1 Ford Truck-*nessary* belting.
- 1 Rock breaker 10x12 inches.
- Tools 4x4 inch Ellis Electric Amalgamators.
- 1 brouge drum hoist and Avery gas engine attached.
- 2 2½ inch pipe connections.
- 1 Automatic Ellis Feeder, 1 screen inch mesh.
- 1030 ft. ¾ inch black pipe.

- 1 2000 gal. wood tank with gauge attached.
- 2 2½ inch valves.
- 1 chain drill, 1 Ratchet drill, bits and twist drills.
- 1 Speedometer. 1 extension wood bit.
- 100 ft. 6 inch 2½ inch black pipe.
- 100 ft. 1 inch pipe dipped.
- 1500 ft. ¾ inch pipe new.
- 6 2½ inch Stand. Ells.
- 4 2½ inch Stand Teas.
- 1 3½x2½ inch bushing.
- 1 3x2½ inch reducer.
- 2 tanks, 1-285 gal. 1-550 gal. capacity, contents and att. Oil drums and smaller tanks.
- 100 ft. ¾ inch Armour steel transmission cable.
- 2 Ellis grip automatic shives.

[Endorsed]: Filed May 6, 1929. [11]

[Title of Court and Cause.]

AFFIDAVIT OF OSCAR A. ELLIS.

Oscar A. Ellis, being first duly sworn, deposes and says: That he is a citizen of the United States, over the age of twenty-one years, and competent to testify herein;

That your affiant is the attorney-in-fact for the plaintiff, herein acting under and by virtue of a power of attorney executed by the said plaintiff authorizing your affiant to act for her in all business matters in the State of California, prosecute and

defend any action at law or equity for or against her in the state.

That your affiant will answer collectively the affidavits of defendants, Langstaff, R. A. Murray, Frank Enquist, and J. W. Graham, respectively, in the affidavit of M. C. Langstaff, he attempts to set forth what occurred in the Superior Court of Placer County, referring thereto to the supplementary proceedings therein prosecuted by said plaintiff and further attempts to allege in his said affidavit upon information and belief, that "the purported sale, if any by the Ellis Mill Company to Unda Munoz, was executed collusively to evade the order of said Superior Court and for giving color of Jurisdiction to the above cause."

That your affiant, denies that allegation of said affidavit, stating that the Ellis Mill Company had no interest in said machinery, having been purchased by *the having been purchased by* [12] the Christmas Hill Mining Company, for the sum of twenty-five hundred dollars, there is no foundation or merit in such an assertion of said defendant upon his oath, your affiant refers to the bill of sale from the Ellis Mill Company to plaintiff, copy of which is hereto attached and marked Exhibit "A" and copy of the lease contract marked Exhibit "B" and both made part hereof.

That your affiant further denies that said defendant has not molested Unda Munoz nor her interest in said machinery, said defendant levied upon the property of the plaintiff and was obliged to file her claim of same or else her property would

be sold under sheriff's sale the claim being first filed against the said levies of the defendant in October, 1928.

That your affiant referring to the affidavit of J. E. Knapp and the items of machinery and the present alleged market costs thereof, the said affiant, Knapp, being a second-hand dealer in mining and milling machinery, but, as a valuator, he is absolutely ignorant of the Ellis Mill and Amalgamator having any value for same reference is hereby made to Exhibits "A" and "B."

That your affiant referring to the affidavit of R. A. Murray, he alleges in his affidavit, "that he is now and since the year 1890, has been a mining operator and has worked in all branches of mining at various times, and has acted and performed all the duties of a minor, and including those of a superintendent of mines, that affiant has bought and sold and operated all kinds of mines and *minin* equipment therefor," that your affiant has known the said Murray for about two years, that your affiant knows of no permanent office or place of business occupied by him, but he is what is commonly called amongst [13] business people in his line "a Curbstone broker" and during all of the time that your affiant has known the said R. A. Murray, he has had no permanent place of business.

That your affiant further alleges that the said affidavit R. A. Murray, purports to be in the nature of an expert and should be disregarded until he qualifies as such before this Court.

Referring to Exhibit "C" attached to said affidavit of R. A. Murray, a promissory note, an evidence of indebtedness duly executed, this note was given to "Murray" in consideration of full payment of any balance due to him upon said machinery transaction, and was given before the 20 H. P. and 32 H. P. Fairbanks-Morse gasoline engines listed in exhibit "B" were delivered to the Ellis Mill Company upon the representations of said Murray that the said engines were shipped and in transit, but, the said engines never reached their destination and were never delivered to the Ellis Mill Company or to your affiant who was the actual purchaser of same, hence, the said Murray has no legal claim and is not entitled to such only upon the note for recovery of his alleged purchase price for the balance alleged to be due to him upon said machinery, which, he did not deliver.

That, Frank Enquist, whose affidavit also appears with that of R. E. Murray, attempts to qualify as an expert in mining, and your affiant makes the same objection to the affidavit of R. A. Murray should be disregarded until he qualifies as such expert in person before this Court.

That your affiant alleges that the said Frank Enquist, is about as inefficient a person as could be placed in charge [14] of a property intended as a mining property to produce a profit as could be procured, that the said Enquist, represented to your affiant that he was an experienced mining man had experience in the operation of the mines both on surface and underground and understood the

arranging of same and installing machinery, it is admitted he was in charge of the Christmas Hill Mine at Butchers Ranch, Placer County, California, from March, 1927, to June, 1928, and during all of that time with the assistants he had employed and to whom the sum of about two thousand dollars in wages were paid utterly failed to install the said machinery for any operating or productive purpose, that said Enquist had no knowledge of the financial affairs of the said Ellis Mill Company nor the Christmas Hill Mining Company.

That the plaintiff, Unda Munoz, had no connection with the Christmas Hill Mining Company, of which, he was the superintendent, that at all of the time she was and now is a resident of the city and State of New York, she being only interested in the Ellis Mill Company, on account of her business relations with the last-named corporation.

That your affiant, denies, the allegations of the said Enquist in his affidavit as to the Giant Mill Ellis and the price \$1,500 or \$2,500 *Dollars* and the record is again hereby referred to in the attached Exhibits "A" and "B"; as to the allegations of the said affidavit of the value of the Ellis Mill, your affiant denies the same and it is an absolute falsehood and Enquist well knows the same to be untrue, but, disregarding the solemnity of his oath he *allege* the same to be true.

That the Christmas Hill Mining Company did not buy any machinery under any condition from R. A. Murray, and the tanks, [15] etc., bought by the Ellis Mill Company for the use of the Christmas

Hill Mining Company and paid for by the Ellis Mill Company and as to the alleged value of the *of the* said milling machinery reference is hereby made to the record copies of which are hereto attached and marked Exhibits "A" and "B."

Referring to the affidavit of J. W. Graham, the facts are briefly, that said Graham was the secretary of the Christmas Hill Mining Company and the money received by Graham while he was secretary was procured from the sale of stock issued to your affiant as trustee for the Ellis Mill Co. *a* and during his incumbency in office as secretary, the said Graham, embezzled the sum of four hundred and twenty-five dollars, but, he refunded the same thereafter when an auditing was made of the accounts.

That said J. W. Graham, severed his connection with the Christmas Hill Mining Company because he was forced to do so for the reasons herein *preceedingly* stated.

That the said affiants in connection with the former owners and the agent by whom the sale of the property was made to the Christmas Hill Mining Company used every means as soon as work had commenced on the property and machinery being shipped to and was delivered upon the property and the said parties with certain members within the organization began a collusion and a conspiracy to do fraud the plaintiff and the Ellis Mill Company, being the financiers of the said company and it appears from the conduct of said parties that they wanted to get Ellis and the Ellis Mill

Company off the premises after having *spen* much time and money in an effort to put the mine on a paying basis for all concerned and would appear from said conduct that some one else was desirous of procuring [16] the said property of the Christmas Hill Mining Company.

That the five hundred (\$500) dollars referred to R. A. Murray's affidavit was advanced by the Ellis Mill Company and paid by and through J. W. Graham, the acting secretary of the Christmas Hill Mining Company.

That your affiant for and in behalf of the plaintiff herein refers this Honorable Court to the bill of complaint on file in the action the rule of Equity of this Court by which injunction proceedings are governed and your affiant prays this Honorable Court should grant the relief prayed for in said bill of complaint.

O. A. ELLIS.

Subscribed and sworn to before me this 18 day of May, 1929.

[Seal] THEO. FROLICH,
Notary Public in and for the City and County of
San Francisco, State of California. [17]

EXHIBIT "A."

ELLIS MILL COMPANY.

Incorporated.

Shop 554 Bryant Street.

Office 147 Prospect Ave

Show Coom

126 Stillman S

San Francisco, California, U. S. A.

May 23, 1927.

To the Board of Directors of Christmas Hill Mining Company, Reno, Nevada.

Gentlemen:

The undersigned Ellis Mill Company, desires to sell Milling machinery and we understand that your above mentioned Company wishes to purchase such machinery therefore we make you the following offer; That for and in consideration of twenty five thousand (25,000) shares of the capital stock of your Company to be issued to the order of O. A. Ellis, acting as trustee for the Ellis Mill Company, and One (\$1) Dollar in U. S. money to be paid each month to the order of O. A. Ellis, acting as trustee for the Ellis Mill Company, we will lease to your Company to be used on the Christmas Hill Mine by your Company solely, One Giant Ellis Mill and outfit as described in list hereto attached, but, changes may be made later by Mutual agreement between your Company and O. A. Ellis, Secretary of the Ellis Mill Company and for this agreement acting as trustee for the Ellis Mill Company.

It is to be understood that said machinery is to be delivered F. O. B. in San Francisco and that your company is to pay all taxes on it and make all repairs while using it, but that full ownership and title is to remain in the Ellis Mill Company and the said machinery is not to be subject to any liens for any act or liability of the Christmas Hill Mining [18] Company.

Signed ELLIS MILL COMPANY.

By O. A. ELLIS, Secretary.

Reno, Nevada, May 23rd, 1927. The above proposal accepted by resolution of the Board of Directors, of Christmas Hill Mining Company at its first meeting and stock ordered to be delivered, attest, Alfred G. Minter, Secretary, O. A. Ellis, President and Chairman.

PRICE LIST GIANT ELLIS MILL OUTFIT.

Giant Mill	\$5,000.
Automatic Ellis Feeder	175.
60 8' 6' Ply Special belt for Mill	138.
25 H. P. Witte Gas Engine wt. #3400.....	865.00
Pulley Friction Clutch	40.
Scree Grizzly one in. mech.	30.00
4 4x4 Ellis Elect. Amalgamators	1,840.
Rock breaker 10x12	1?125.
15 H. P. Witte gas Engine Wt. 2375	525.
Belt for same	50.
Hoist and engine added O. A. E.	<hr/>
	9,784.60

State of California,
City and County of San Francisco,—ss.

On the 24th day of February, in the year One thousand nine hundred and twenty eight before me, Louise Barden a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared O. A. Ellis, known to me to be the Secretary of the Ellis Mill Company the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, the day and year first above written in this certificate.

LOUISE BEARDEN,
Notary Public in and for the City and County of
San Francisco, State of Cal.

My commission expires December 16, 1929.

A second certificate of acknowledgment also the same as above in words and figures. [20]

EXHIBIT "B."

BILL OF SALE.

Under the authority of the Board of Directors, dated May 19, 1927, of the Ellis Mill Company, a

corporation, with head office at 147 Prospect Avenue, San Francisco, California, we the undersigned President and Secretary of the said corporation, for One (\$1) Dollar to us cash in hand paid and other valuable considerations, hereby sell, assign, and deliver to U. Munoz, of the City and State of New York, U. S. A. all the right, title, and interest, it has in certain machinery and quartz milling plant near Butcher Ranch, Placer County, California, and under lease to Christmas Hill Mining Company, a corporation formed under the laws of the State of Nevada, and with head offices in Reno, Nevada, this sale also includes one 2000 gal. water tank of wood, one 660 gal. and one 285 gal. iron storage tanks for fuel oil together with pipe lines, contents furnished by or on responsibility of the Ellis Mill Company, one or two smaller storage drums for oil, a lot of tools, one Ford Truck which has not been in use for some time and is registered in the name of Frank Enquist, to hold him responsible while using the truck, but he has at no time been the real owner as it was bought by Ellis Mill Company for other future use.

All of this sale and delivery is subject to release from a certain unjust attachment placed on the major part of it by the sheriff of Placer County for a judgment against the Christmas Hill Mining Company, a corporation, so that the instand after release by the sheriff this sale and delivery [21] is of full force and effect.

Dated this 19th day of September, 1928.

ELLIS HILL COMPANY, a Corporation,
With head office at 147 Prospect Ave., San Fran-
cisco, Cal., U. S. A.

By D. A. KALAZIN,
President.

O. A. ELLIS,
Secretary.

Duly acknowledged before

THEO FROLICH,
Notary Public.

April 19, 1929.

[Endorsed]: Filed Jun. 14, 1929. [22]

[Title of Court and Cause.]

AFFIDAVIT OF JAMES COREY.

State of California,
City and County of San Francisco,—ss.

James Corey, being first duly sworn, deposes and says: That he is a citizen of the United States, over the age of twenty-one years, and a competent witness herein;

That your affiant is a stockholder in the Christmas Hill Mining Company, a corporation, incorporated and existing under the laws of the State of Nevada, that your affiant was employed by the said corporation as its official timekeeper at the property at Butchers Ranch, county of Placer, State of California, from the month of September, 1927, until

on or about the 10th day of May, 1929, and in addition conducted a large part of the correspondence for the Company while Frank Enquist was acting as superintendent of the mine.

That there was a great deal of machinery received by the Company at the mine, that your affiant knew all of the time that the Ellis Mill Company of San Francisco, was furnishing the said machinery to the Christmas Hill Mining Company, that as your affiant had been many times informed and believed the same to be true that financing of the Christmas Hill Mining Company was entirely dependent upon the Ellis Mill Company. [23]

That after the Mining and Milling machinery began to arrive at the property and while Frank Enquist and his assistants were in charge thereof, while, your affiant is not making any effort to qualify as an expert in the installation of machinery of this character, but, I do not hesitate to say that the then superintendent, Frank Enquist, did not know and was wholly incompetent to install the said machinery to produce any results from mining as so intended, that, he had your affiant write many letters to Mr. Ellis, of the Ellis Mill Company, from September, 1927, to February, 1928, stating that everything was progressing in good condition and that the mill would be in operation very soon, that during the month of February, 1928, Mr. Ellis personally visited the property and he discovered for the first time that his superintendent was misleading him all of the time, that Mr. Ellis im-

mediately discharged two of the assistants, that at no time during the administration of the said Frank Enquist, was the machinery installed and no production of any value from the mine.

That on account of the inefficiency of the said Frank Enquist, Superintendent of the Company property, the Company paid to assistants without much results the sum of approximately two thousand (\$2,000) dollars.

JAMES COREY.

Subscribed and sworn to before me this 18th day of May, 1929.

[Seal] THEO. FROLICH,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Jun. 14, 1929. [24]

[Title of Court and Cause.]

AFFIDAVIT OF LELAND DAUGHERTY.

Leland Daugherty, being first duly sworn, deposes and says: That he is a citizen of the United States, over the age of twenty-one years and competent to testify herein;

That your affiant is a stockholder in the Christmas Hill Mining Company, that he was employed at the mine from July, 1927, to October, 1928, that your affiant has had a practical experience in the handling of gas engines for the past fifteen years, while, not making any attempt to qualify as an ex-

pert at this time, but, during all of the time, while, I was at the mine, Frank Enquist was in charge thereof and for the purpose of installing the machinery for operation at the mine with his assistants.

That your affiant has no hesitancy to state that the said Frank Enquist, has no knowledge of gasoline engines and has no knowledge or experience to qualify for a man in the position he then occupied as superintendent to install a plant such as was required at the Christmas Hill Mine.

That the said Frank Enquist, utterly failed to install the machinery consisting of the Ellis Mill *for the millin* for the milling of the ores and rock at the mine and consisted of a large tailing dump along the alleged pay rock it was [25] soft and could be milled in large volumes and the Ellis Mill was particularly adapted to the milling of said ore, that prior to becoming a stockholder, your affiant was told by the said Enquist in presence of Mrs. Corey and Mrs. Sullivan; also stockholders in the Christmas Hill Mining Company, that the Ellis Mill was a wonderful mill and that the mine would make all of the stockholders rich by reason of the fact that the Ellis Mill could handle a large tonnage daily and that these statements were made many times by the said Frank Enquist.

That your affiant verily believes and alleges the same to be true, if the Ellis Mill was, had been properly installed the mine would become a large producer of gold *fro* the tests made from various places on the property, the tailings and the *lege* as it appears on the surface.

That prior to the attempt being made by the said Enqui to install the large mill of the Ellis type, a small prospecting mill of the same type was on the premises and the results proved so satisfactory that it was decided to install the large mill and at the same time the said Frank Enquist continued to asserts what a wonderful mill the Ellis Mill was and the results the Company would *would* derive from it in profits.

LELAND DAUGHERTY.

Subscribed and sworn to before me this 18th day of May, 1929.

[Seal] THEO. FROLICH,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Jun. 14, 1929. [26]

[Title of Court and Cause.]

AFFIDAVIT OF C. A. ACKERMAN.

State of California,
City and County of San Francisco,—ss.

C. A. Ackerman, being first duly sworn, deposes and says; that he is a citizen of the United States over the age of twenty-one years and competent to testify herein.

That your affiant has no desire to impress the idea upon the Court that he is making any attempt in making this affidavit as an expert, as he has not qualified for such testimony before the Court,

but, is ready, able, and willing to do at the proper time.

That your affiant has been employed by the Ellis Mill Company, a corporation, for more than one year last past, that your affiant has many years experience in all *branch* of mining and assaying, that your affiant is familiar with the construction of the type of Ellis Mill of various capacities and in general use such as the mill shipped to the Christmas Hill Mining Company, at Butchers Ranch, Placer County, California, via Auburn, that said mill will do all that is claimed for *for* it in so far as the milling of *or* and the saving of the gold values therefrom. That during the month of April, your affiant was sent by the Ellis Mill Company to Hackbury, Arizona, to adjust an Ellis Mill with a capacity of 150 tons, that your affiant saw the same mill after adjustment in [27] operation and the gold values saved by and from its milling operations.

That your affiant has read the copies of the affidavit of R. E. Murray and Frank Enquist, respectively, and knows the contents thereof and each of these affiants did not know anything about the Ellis type of mill or they were and have made their affidavits falsely, your affiant has shipped mills to all parts of California, Arizona and *Idah* and where the plant is properly installed, your affiant has not heard of one single complaint.

C. A. ACKERMAN.

Subscribed and sworn to before me this 18th day of May, 1929.

[Seal] THEO. FROLICH,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Jun. 14, 1929. [28]

[Title of Court and Cause.]

AFFIDAVIT OF E. T. ROBIE.

State of California,
County of Placer,—ss.

Comes now E. T. Robie, and being first duly sworn, deposes and says:

That he is an officer, to wit, president of Auburn Lumber Company, a corporation, one of the defendants in the above-entitled case; that he does not submit to the jurisdiction of the above-entitled court.

That on or about July 13, 1928, the said Auburn Lumber Company procured a judgment against the Christmas Hill Mining Company, in the Superior Court of the State of California, in and for the county of Placer, for the sum of \$763.92.

That on July 30, 1928, execution was issued and levied upon the interest of said Christmas Hill Mining Company in and to certain mining machinery, located at the so-called Christmas Hill Mine, near Butcher Ranch, in Placer County, California; That thereafter a Third Party Claim was

filed against the property under execution by Ellis Mill Company, wherein the value of the property was claimed to be the sum of \$12,500.00, or thereabouts; that said claimed value was a grossly exorbitant figure [29] and said Auburn Lumber Company, therefore, was unable to bond against the third-party claim and, by reason thereof, the said levy was released and the writ of execution returned unsatisfied.

That thereafter, and on March 29, 1929, supplemental proceedings for examination of Christmas Hill Mining Company and O. A. Ellis, as designated against, were had, and thereafter, On April 10, 1929, W. N. TenEyck was, by the Superior Court of Placer County, appointed receiver of and for said Christmas Hill Mining Company, but that said W. N. TenEyck has never filed the required bond therefor and has never qualified not acted as such Receiver.

That affiant is informed by Orrin J. Lowell, one of his attorneys, and believes, and upon such information and belief alleges, the fact to be that O. A. Ellis at all times herein mentioned claimed that the property belonged to Ellis Mill Company and that no disclosure was ever made by said O. A. Ellis of any purported transfer to Unda Munoz, Plaintiff herein, until the 29th day of April, 1929.

That affiant is informed and believes, and upon such information and belief, alleges that during a visit of O. A. Ellis to New York, in December, 1928, said O. A. Ellis and Unda Munoz collusively entered into a purported purchase and sale of said

says: That he is a citizen of the United States, over the age of twenty-one years, and a competent witness herein.

That your affiant has been for a number of years and now is and was during the month of May, 1927, a resident of the city of Reno, county of Washoe, State of Nevada, at which time and place the Christmas Hill Mining Company, a corporation, was incorporated and organized, that your affiant was present at the first meeting of the organization, that, Mr. Alfred G. Minter, acting as secretary of said meeting and that I was elected a director of the Christmas Hill Mining Company, at the said meeting.

That thereafter the directors, consisting of O. A. Ellis, Alfred G. Minter, and J. D. Leonard, your affiant, held the first directors meeting at the Hotel Golden in said city, county and state aforesaid, that at said directors' meeting The Ellis Mill Company, a corporation, made an offer to the said directors of the Christmas Hill Mining Company, to lease certain milling machinery for its use at its *at its* property, situated in Placer County, State of California, that said offer of the [32] Ellis Mill Company, was then accepted by the said Christmas Hill Mining Company, that the Christmas Hill Mining Company, a corporation, *to* deliver certain stock of said corporation and monthly payments for and in consideration of said lease and the use of said machinery furnished by the said Ellis Mill Company,

That he was general superintendent of said Christmas [34] Hill Mining property from March, 1927, until about June 11, 1928; that during said period he purchased mining machinery and equipment and supplies for said mine; that as such superintendent he kept himself informed of the financial affairs of the Christmas Hill Mining Company.

That he never knew of, or heard of, Unda Munoz, plaintiff in this action, in connection with the Christmas Hill Mining Company in any manner whatever until the spring of 1929, although he had many conversations with all the officers of said mining company, and during the period above mentioned was a director of said Company.

That soon after affiant became superintendent of said Company, said O. A. Ellis, informed affiant that said Ellis would put in a Giant Ellis Mill, at cost, upon said mining property because of its advertising value, which would assist him in selling other such mills; that later said Ellis informed affiant the price of said mill and a rock crusher would be fifteen hundred (\$1500.00) dollars; that thereafter said Ellis informed affiant the price would be twenty-five hundred (\$2500.00) dollars; that said full purchase price of twenty-five hundred (\$2500.00) dollars was paid to said O. A. Ellis for said mill and rock crusher.

That during the negotiations preceding the organization of the Christmas Hill Mining Company, it was agreed that twenty-five thousand (25,000) shares of capital stock would be issued to O. A.

Ellis to be resold by him, and the money so raised was to be used in buying machinery and equipment for the Christmas Hill mine, this being done because of the statement of said Ellis that it would save money.

And it was further agreed that the Ellis Mill was to be paid for in cash and not with stock. [35]

That while affiant was superintendent of said Christmas Hill mine he worked with and used the machinery at the mine and knows what machinery was at said mine during said period; that there were only three (3) gas engines at said mine, to wit, one Avery 50 H. P. engine, one Economist 20 H. P. engine and one Munsie 20 H. P. engine.

That affiant knows that the Avery and Economist engines above mentioned were and are owned by R. A. Murray; that the Munsie engine is worthless, being of an obsolete model; that the Avery engine was attached to the hoist but was later at the mill; that the rock breaker described in Exhibit "A" to the complaint in the above-entitled action, is of no value; that it was built by the Ellis Mill Company and is mechanically inefficient and will not crush rock reasonably or profitably.

That from affiant's experience with the Ellis Mill he is convinced it is worthless and that though it was claimed by the Ellis Mill Company to have a capacity of 500 ton per twenty-four hours on 20 H. P., said Mill would never crush any part of 500 tons per twenty-four hours, and that affiant and his assistants were unable to get said mill to crush any reasonable amount of rock whatever.

That the machinery and equipment secured by said Christmas Hill Mining Company from said R. A. Murray were purchased under conditional sales contract with the title remaining in the seller until paid for, and that said machinery and equipment so purchased were not fully paid for during the time affiant was superintendent of said mine.

That the tanks and oil listed in the complaint in the above-entitled cause were purchased by said Christmas Hill Mining Company through affiant as its superintendent from the Standard Oil Company, at Auburn, California. [36]

That the market value of the machinery listed in Exhibits "A" and "B" in the complaint in the above-entitled cause, other than the property therein listed and belonging to said R. A. Murray, is not in excess of eight hundred (\$800.00) dollars, and that machinery competent to perform the work intended to be performed on said property could be bought and moved to said mine at not to exceed eight hundred (\$800.00) dollars.

That during the period affiant was superintendent of said mine, he was a director of said Christmas Hill Mining Company and that so far as he knows during said period there was no meeting of the Directors of said corporation.

That said O. C. Ellis at all times insisted upon, and did have and take full charge and control of the affairs of said corporation and of said mine.

FRANK ENQUIST.

Subscribed and sworn to before me, this 15th day of May, 1929.

[Seal] W. W. HEALEY,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed May 16, 1929. [37]

[Title of Court and Cause.]

AFFIDAVIT OF J. W. GRAHAM.

State of California,
City and County of San Francisco,—ss.

Comes now J. W. Graham, and being first duly sworn, deposes and says:

That he is a citizen of the United States over the age of twenty-one years and a competent witness herein.

That he is acquainted with O. A. Ellis and with the Christmas Hill Mining Company, a corporation, and that he was Secretary of said Christmas Hill Mining Company from about the month of March, 1927, to the month of February, 1928.

That during affiant's said connection with said Christmas Hill Mining Company, said O. A. Ellis was the President of said Company, and was in entire charge and management thereof and insisted upon carrying on and conducting the affairs of said corporation entirely to suit himself.

That after becoming secretary of said Christmas Hill Mining Company no meetings of the directors

of said company were ever held to the best of affiant's knowledge or recollection, and that affiant to the best of his knowledge never wrote up any minutes of any meetings of said Board of Directors.

That affiant has this day read the affidavit of one R. A. Murray made this date for filing in the above case, and that [38] the statement and exhibit thereto attached of machinery and equipment sold by said R. A. Murray to said Christmas Hill Mining Company, is correct to the best of affiant's knowledge and belief; that all of said machinery and equipment was purchased by said Christmas Hill Mining Company from said R. A. Murray under conditional contract of sale and purchase, with the title remaining in the seller until fully paid for, and that said machinery and equipment was never fully paid for by said Christmas Hill Mining Company while affiant was connected with said Company.

That said O. A. Ellis, or the Ellis Mill Company, sold the Ellis Mill and Rock Crusher mentioned in this case, to said Christmas Hill Mining Company, and was paid in full therefor in the sum of twenty-five hundred (\$2500.00) dollars, which was the agreed price, and that such transaction was a straight sale and purchase.

That affiant during his said connection with said Christmas Hill Mining Company never heard of said plaintiff herein, Unda Munoz, and that while he was secretary of said Company, said Unda Munoz had no dealings with said Company, nor did

she advance and pay over any money whatever to said Company.

That affiant severed his connection with said Christmas Hill Mining Company and transferred his interest therein to said O. A. Ellis about February, 1928, because of the manner in which said O. A. Ellis conducted and carried on the affairs of said Company and because of affiant's disapproval thereof.

J. W. GRAHAM.

Subscribed and sworn to before me this 15th day of May, 1929.

[Seal] W. W. HEALEY,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed May 16, 1929. [39]

[Title of Court and Cause.]

AFFIDAVIT OF R. A. MURRAY.

State of California,
City and County of San Francisco,—ss.

Comes now R. A. Murray and being first duly sworn, deposes and says: That he is a citizen of the United States, over the age of twenty-one years, and a competent witness herein.

That affiant is now and since the year 1890 has been a mining operator and has worked in all branches of mining at various times, and has acted and performed all the duties of a miner, and in-

cluding those of a superintendent of mines; that affiant has bought and sold and operated all kinds of mines and mining equipment therefor.

That since about May 1, 1927, affiant has been familiar with the Christmas Hill mine in Placer County, California, and with the attempts to operate the same under the name of the Christmas Hill Mining Company.

That on or about July 5, 1927, affiant entered into a written agreement with O. A. Ellis, a copy of which is attached herein marked Exhibit "A" and made a part hereof; that the machinery described in said agreement was delivered on or about September 6, 1927, to said Christmas Hill mine; that although said agreement was made by said O. A. Ellis it was understood that the transaction was between affiant and the Christmas Hill Mining Company; that said agreement was the culmination of [40] negotiations between affiant and Mr. Graham, as secretary, and Mr. Enquist, as Manager, of said Christmas Hill Mining Company.

That five hundred (\$500.00) dollars has been paid on said purchase price by J. W. Graham, secretary of the Christmas Hill Mining Company, but that no more of the considerations therefor has been paid; that affiant has notified and informed both O. A. Ellis and the Christmas Hill Mining Company that they were in default in payments of said purchase price, and that both said Ellis and said Christmas Hill Mining Company were in default and has forfeited all interest in the machinery described in said contract; that at no time has either the Christ-

mas Hill Mining Company or said Ellis made any claim of ownership of said machinery, or any thereof, to affiant, or to the knowledge of affiant.

That the double drum hoist described in the contract is the same double drum hoist that is described in Exhibit "A" attached to the complaint in the above-entitled action, being the only such hoist at the Christmas Hill mine; that on or about November 3, 1927, affiant entered into a written contract with the Christmas Hill Mining Company, by O. A. Ellis, as president, a copy of which is attached hereto marked Exhibit "B" and made a part of this affidavit, and that a promissory note for seven hundred (\$700.00) dollars, a copy of which is hereto attached and marked Exhibit "C" and made a part hereof, was delivered by O. A. Ellis, as president of the Christmas Hill Mining Company to affiant, and that no part of said note has been paid; that said note is not a corporation note made by the Christmas Hill Mining Company with a resolution of said Company authorizing the president and secretary to sign said note, and that no legal stocks whatever of said Company has been tendered to affiant; affiant has been further advised by the Corporation Commissioner [41] of California that no permit has ever been secured by said Christmas Hill Mining Company for the issuance or sale of any of its capital stock.

That the Avery gas engine described in said contract was purchased under contract by the Christmas Hill Mining Company immediately thereafter; that by mutual agreement, and at the request of

said Ellis, it was agreed that the other two engines mentioned need not be delivered, allowance being made therefor, as shown in said contract; that thereafter on or about December 27, 1927, affiant at the request of said O. A. Ellis, as President of Christmas Hill Mining Company, purchased from the Machinery Sales Agency, one—20 H. P. Economist gasoline engine, and had the same shipped to the said Christmas Hill mine to perform the work originally intended of the 20 H. P. Fairbanks engine; that a copy of the said statement with the notations thereon showing that affiant had paid the Machinery Sales Agency the price thereof, and had the same, with other equipment, sent to the Christmas Hill mine, was delivered to said O. A. Ellis; that said statement was endorsed on May 8, 1928, to show a balance therein called “payment” was due to show that it and the preceding two agreements were part of a single transaction, and that thereafter affiant *again* to the Christmas Hill mine to show that on February 18, 1928, sundry equipment (as listed on Exhibit “D” attached hereto) of a total sum of \$251.54, was also shipped to the Christmas Hill mine at the request and direction of the Christmas Hill Mining Company.

That at the time of the delivery of affiant’s machinery to said mine on or about September 8, 1927, affiant inspected all the equipment at said mine, and that he is familiar with the nature and character of machinery shipped to said mine thereafter part of which is listed in Exhibit “A” in the complaint on file [42] in the above-entitled action;

that affiant has had negotiations for the purchase of a Giant Ellis Mill like that so listed, and has thereupon kept himself informed of the performance of the Ellis Mill at the Christmas Hill mine.

That he has been repeatedly informed from all sources that said mill has been a failure and for that reason has no value; that all the machinery so listed can be replaced in open market at any time.

That on or about March 20, 1929, affiant received a letter and advices from the attorneys of the plaintiffs in the actions brought by the defendants Langstaff and Auburn Lumber Company mentioned in the above-entitled action, which said actions were in the Superior Court of Placer County, California, that execution had been taken out and levied in said Superior Court actions, but that such execution had not been levied upon any of the machinery or equipment claimed by this affiant.

R. A. MURRAY.

Subscribed and sworn to before me, this 15th day of May, 1929.

[Seal]

W. W. HEALEY,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed May 16, 1929. [43]

EXHIBIT "A."

San Francisco, California, July 5, 1927.

Mr. O. A. Ellis,

565 Bryant St.,

San Francisco, California.

Dear Sir:

Confirming our verbal understanding regarding the sale to you by me of the Mining Machinery hereinafter described, I wish to state the terms of the sale as follows:

1. The total purchase price is \$1750, payable as follows: One Thousand Shares of the Capital Stock of the Christmas Hill Mining Company, at One Dollar per Share; \$250 cash down, the receipt of which is hereby acknowledged; \$250 upon removing the Machinery from its present location, and the balance of \$250 on or before Dec. 31, 1927.

2. The Machinery consists of the following items: One Special Built 50 H. P. Double Drum Hoist, both Drums 18" dia. x 26" long. Maximum rope speed 400 ft. per minute. One Revolving Screen Trommel 32" x 8'-6", with $\frac{5}{8}$ " opening, and one extra screen 2- $\frac{1}{4}$ " opening. Complete with Drive Gears, Trunnions, etc. One Revolving Screen 38" dia. x 9- $\frac{1}{10}$ ", with 22- $\frac{1}{2}$ " section not punched, on shaft 13 ft. in length. One Heavy Duty 3" Open Runner Centrifugal Pump, with pulley. One Byron Jackson 2" Enclose Runner Pump. One Belt, and the extra pulleys and blacks that may be there.

3. All the above-described Machinery is guaranteed by me to be in first-class condition, and if found to be not satisfactory to said O. A. Ellis, after an examination by him or his [44] agent, I hereby agree to return the \$250 already paid, and to cancel any further obligation on the part of said O. A. Ellis to purchase said machinery. It is understood, however, that Ellis is to make such examination not later than August 1, 1927.

4. The above described Machinery is locate in or near Durham, Butte County, California, and the price quoted above is F. O. B. Durham.

R. A. MURRAY.

I accept the above statement.

O. A. ELLIS. [45]

EXHIBIT "B."

San Francisco, California, November 3, 1927.

The following described property is hereby delivered by R. A. Murray, Seller, to the Christmas Hill Mining Company, Buyer, on the following terms and conditions;

1. 20 H. P. Fairbanks-Morse, horizontal Gasoline Engine, price, FOB, Battle Mountain, Nevada.....\$ 350.00
1. 32 H. P. Fairbanks-Morse, horizontal Gasoline Engine, price, FOB, Battle Mountain, Nevada\$ 550.00
1. 50 H. P. Avery Gasoline Engine, 4 cylinder, Price, FOB, Midas, Calif..\$1000.00

for the total purchase price of Nineteen Hundred (\$1900) Dollars, payable as follows: Cash Twelve Hundred (\$1200) Dollars and Note for Seven Hundred (\$700) Dollars, due May 3, 1928.

The title to said property shall remain wholly and exclusively in the Seller, or his assigns, until the full amount of the note is paid when the same shall become vested in the Buyer.

Buyer agrees to keep the property in good condition, and not to remove it from the Christmas Hill Property where it was originally installed, nor to sell, pledge, nor to any way encumber said property until it is paid for in full, and upon default of any payment provided herein the Buyer agrees upon request of the Seller, or his assigns, promptly to return the above described property in good condition, less natural wear, and that all payments already made shall be retained by the seller, or his assigns, as and for rental, compensation, depreciation, and liquidated damages. If for any reason the above described property has to be sold, the amount received for same shall be applied as a payment on this agreement. [46]

This agreement is further evidence by a note of even date herewith as above, same being made a part of this agreement, and to which reference is hereby made.

We, the undersigned, hereby state that we fully

understand, approve and accept and agree to the foregoing conditions.

CHRISTMAS HILL MINING COMPANY,
Buyer.

O. A. ELLIS, Pres.,
San Francisco, Calif.
Address.

R. A. MURRAY,
Seller.
HOTEL CARTWRIGHT,
524 Suttet St., S. F. Calif.
Address. [47]

EXHIBIT "C."

\$700.00 San Francisco, Calif., Nov. 3, 1927.

Six Months after date, without grace, we promise to pay to the order of R. A. Murray at San Francisco, California, Seven Hundred Dollars, in Gold Coin of the United States of America, with interest thereon in like Gold Coin at the rate of Six per cent, per Annum from date until paid, for value received; and in case suit or action is instituted to collect this note, or any portion thereof, we promise to pay such additional sum as the Court may adjudge reasonable, as Attorneys' fees in said suit or action.

O. A. ELLIS,
Pres.,
J. W. GRAHAM,
Sec.,

Christmas Hill Mining Company.

No.—Due — [48]

EXHIBIT "D."

STATEMENT No. 1.

Telephone Sutter 3043

MACHINERY SALES AGENCY.

MACHINERY AND SUPPLIES.

760-762 Folsom Street,

San Francisco, Calif.

February 18th, 1928.

Sold to Mr. R. A. Murray

Address c/o Cartwright Hotel, San Francisco, Calif.

Shipped from Shipped to Christmas Hill Mines,

Notify Butcher Ranch, Date

Address Auburn, Placer County, California Via

Terms Net Cash Our Number 1234 Your Number

Req. No.

Quantity.	Price.	Amount.	Total.
750-Ft. $\frac{3}{4}$ " Cable	per ft.	.11	82.50
20-Ft. 10" Leather Belt	per ft.	1.25	25.00
Plus charge for making 9" endless, 15' 11" long			2.00
1-12" dia. 10" face, $3\frac{1}{4}$ " bore, steel split Pulley		4.25	4.25
1-16" dia. 10" face, $3\frac{1}{4}$ " bore, steel split Pulley		6.24	6.24
107-Ft. (3 pcs) 8" Rubber Belt	per ft.	.44	47.08
44'2"-6" Rubber Belt	per ft.	.33	14.52
1860-Lbs. 16 lb. Rail	per net ton	35.00	32.55
15-Lbs. Spikes, for above rail	per lb.	.08	1.20
2- $3\frac{1}{4}$ " Bearings	each	6.00	12.00
1-18"x18"x $2\frac{5}{8}$ " Wood Pulley		6.00	6.00
5'8"-Rubber Belt	per ft.	.44	2.20
3/2/28		235.54	235.54
16-ft. 9" Leather Belt.	per ft.	1.00	16.00
		251.54	

Paid

MACHINERY SALES AGENCY
FEBRUARY 18th, 1928.

EXHIBIT "D-1."

Telephone Sutter 3043.

STATEMENT No. 2.

MACHINERY SALES AGENCY

Machinery and Supplies.

760-762 Folsom Street,

San Francisco, Califor.

Dec. 27th, 1927.

Sold to Mr. R. A. Murray

Address San Francisco, California Shipped from San Francisco Shipped to Christmas Hill Mines Company Date December 17th, 1927 Address Auburn, Calif. Notify Butcher Ranch via Freight Terms Net Cash Our Number 2752-2233 Your Number Req. No.

Quantity	Price	Amount	Total
1-20 H. P. Economist Gasoline Engine			
Price FOB, San Francisco	350.00	350.00	350.00

WH.

Paid

Machinery Sales Agency

San Francisco, Calif., May 8, 1928.

As per letter of acceptance under date of July 5th, between O. A. Ellis, Buyer, and R. A. Murray, Seller of mining equipment, with a payment due and unpaid Dec. 31, 1927; said payment for the sum of 250.00

Statement No. 1—Supplies from Machinery

Sales Agency

251.54

Statement No. 2—1-20 H. P. Economist
 Horizontal Gasoline Engine Price FOB
 San Francisco, Cal. 350.00

This statement is further evidenced by an agreement for Gasoline Engines and a note to R. A. Murray for the sum of Seven Hundred Dollars (\$700) due May 3, 1928, signed Christmas Hill Mining Co. by O. A. Ellis, President, and J. W. Graham, Secretary, Buyer, and R. A. Murray, Seller. [50]

[Title of Court and Cause.]

AFFIDAVIT OF G. W. SEATON.

State of California,
 County of Placer,—ss.

Comes now G. W. Seaton, and being first duly sworn, deposes and says:

That he is, and for approximately one year last past has been, a duly appointed, qualified and acting deputy sheriff of Placer County; that E. H. Gum is, and at all times herein mentioned has been, the sheriff of Placer County;

That said E. H. Gum, as said sheriff, has now under levy of execution, in the action of Auburn Lumber Company vs. Christmas Hill Mining Company, the interest of the Christmas Hill Mining Company in and to the following described property, to wit:

1 Rock breaker 10x12 inches

Tools, 4x4 Ellis Electric Amalgamators

[Title of Court and Cause—Causes Nos. 317, 318.]

AFFIDAVIT OF W. N. TEN EYCK.

State of California,
County of Placer,—ss.

Comes now W. N. Ten Eyck and being first duly sworn, deposes and says:

That he is named as a defendant in the above-entitled action; that he is not and never has been receiver of the Christmas Hill Mining Company; that he was appointed by the Superior Court of the State of California in and for the county of Placer to act as such but has never qualified by filing his oath and bond and has never acted as such;

That title to the said machinery has never been determined by a suit at law; that part thereof is claimed by R. A. Murray; that affiant believes all thereof, except the property of R. A. Murray, belongs to the Christmas Hill Mining Company; that the property could be duplicated in open market; that he knows the Auburn Lumber Company and M. C. Langstaff; that both he and said Auburn Lumber Company and M. C. Langstaff are solvent and [53] able to respond in damages if damages should be awarded plaintiff.

W. N. TEN EYCK.

Subscribed and sworn to before me this 14th day of May, 1929.

[Seal] HELEN M. BERNARD,
Notary Public in and for the County of Placer,
State of California.

[Endorsed]: Filed May 16, 1929. [54]

[Title of Court and Cause—Causes Nos. 317, 318.]

AFFIDAVIT OF GEORGE MATHER.

State of California,
County of Placer,—ss.

George Mather, being first duly sworn, deposes and says: That he is the owner of a mining claim that adjoins that on which the machinery listed in Exhibit "A" attached to plaintiff's complaint is located; that he gave an option on his claim to W. N. Ten Eyck, who transferred said option with others to Christmas Hill Mining Company in the spring of 1927; that he has worked on the property at all times since said time, both during the possession of the Christmas Hill Mine and since said corporation ceased operations; that he has seen all machinery that has moved on and off the Christmas Hill Mine; that at the present time there are only three gas engines at the mine, two of which are claimed, affiant is informed, justly by R. A. Murray; that the Ford truck that formerly was located on the property has been moved to a place unknown to affiant; that the oil tanks and contents therein were sold to the Christmas Hill Mining Company

by the Standard Oil Company of California; that said Standard Oil Company of California attached the same for a balance due on the purchase price and then released the same on the debt being paid.
[55]

That the machinery at the mine has not operated successfully and is of little value compared to the cost of manufacture; that if any person saw fit to buy the same inefficient machinery, they could do so in open market.

GEORGE MATHER.

Subscribed and sworn to before me this 14th day of May, 1929.

[Seal] HELEN M. BERNARD,
Notary Public in and for the County of Placer,
State of California.

[Endorsed]: Filed May 16, 1929. [56]

AFFIDAVIT OF J. E. KNAPP.

J. E. KNAPP COMPANY
MACHINERY MERCHANTS
NEW AND USED EQUIPMENT
Balboa Building, 593 Market Street

San Francisco, Calif. May 11th, 1929.

To whom it may concern:

The following are the present prices on second-hand equipment delivered f. o. b. cars San Francisco as per Exhibit "A" on Plaintiff's complaint:
3-Gas engines of 20, 20 and 50 H. P. 750.00
for the same type and age

1-Ellis Ball Mill	No value
60-ft. 8" belt	9.00
1-10x12 Rock Breaker	500.00
Ellis Electric amalgamator	No value
1-double drum hoist nor including gas en- gine, same included in above	500.00
1000 ft. 7/16" cable	50.00
1-Automatic Ellis Feeder	No value
1030 ft. 3/4" black pipe	50.00
214 ft. 1/2" ditto	7.00
401 ft. 3/4" ditto	18.00
1-200-gallon wood tank	20.00
2-2 1/2" pipe connections	1.00
1-chain drill with drills	5.00
1-Speedometer; 1-extension; 1-bit	2.00
100' 6" 2-2 1/2 black pipe	19.00
1400 f6. 3/4" ditto	63.00
100 ft. 1" ditto	6.00
1500 ft. 3/4" ditto	67.50
6-2 1/2" standard ells	1.50

[57]

4-2 1/2" standard tees	1.00
1-3 1/2"x2 1/2" bushings20
1-3x2 1/2 Reducers50
1-285-gallon tank	25.00
1-550-gallon tank	40.00

2135.70

All these above prices are the present day selling prices on reconditioned guaranteed equipment delivered f. o. b. cars, Bay Points. While we have allowed prices based on reconditioned machinery

for the gas engines, yet one of these cylinders is cracked and while it may be possible to weld it, yet it is highly improbable. At any rate if it should be welded it would take \$100.00 off the price; if it cannot be welded, the engine is a total loss.

It would cost to recondition this equipment and put it in salable order, not less than \$500.00, which would have to be deducted from the selling price contained herein.

I have been in the machinery business in San Francisco since May, 1905, selling both new and used equipment and was for sixteen years connected with the Joshua Hendy Iron Works in the manufacturing of mining equipment and as a dealer in second-hand equipment at the present time.

I would not pay for this equipment above listed where it is at Butcher Ranch, California, or as is, more than \$750.00.

J. E. KNAPP.

Subscribed and sworn to before me this 11th day of May, 1929.

[Seal] W. W. HEALEY,
Notary Public in and for the City and County of
San Francisco, State of California. [58]

[Title of Court and Cause.]

ORDER SETTING ASIDE RESTRAINING ORDER AND DENYING INJUNCTION.

The restraining order heretofore issued in the above-entitled matter is set aside and dissolved; and the application for an injunction having been heard on order to show cause and affidavits thereafter filed; it is now ordered that injunction against the defendants, or any or all of them, be, and it is hereby denied, and the order to show cause dismissed.

June 14, 1929.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Jun. 14, 1929. [59]

[Title of Court and Cause.]

PETITION FOR APPEAL.

To the Honorable A. F. ST. SURE, District Judge
of the Above-entitled Court:

The above-named plaintiff feeling herself aggrieved by the interlocutory decree made and entered in said cause on the 14th day of June, 1929, does hereby appeal from said interlocutory decree to the Circuit Court of Appeals of the Ninth Circuit, for the reason specified in assignment of error, which is filed herewith and pray that her appeal

be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit (and which shall be hereafter designated by appellant), sitting at San Francisco, State of California.

And your petitioner further prays that the proper order touching an any additional security to be required of her (plaintiff) to perfect her appeal be made, the plaintiff has a \$300 cost bond up in this court.

DANIEL BARTON,
Attorney for Plaintiff.

[Endorsed]: Filed Jul. 6, 1929. [60]

[Title of Court and Cause.]

ASSIGNMENT OF ERROR.

Now comes the plaintiff and complainant herein in the above-entitled cause and files the following assignment of error upon which she will rely upon the prosecution of her appeal in the above-entitled cause, from the interlocutory decree made by this Honorable Court on the 14th day of June, 1929.

1. The plaintiff filed her *her* bill of complaint in equity against the defendants that they and each of them be restrained and enjoined from interfering with the property of the plaintiff herein mentioned.